

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOHN D. HOTTOVY,  
DALE A. ZELLERS,  
DONALD W. VERSER and  
DAVID H. BURNS

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Appeal 2007-2080  
Application 10/660,990  
Technology Center 1700

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Decided: October 10, 2007

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Before CHARLES F. WARREN, CATHERINE Q. TIMM, and  
LINDA M. GAUDETTE, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

We remand this application to the Examiner because this appeal is not yet ready for our review.

This appeal is not ripe for review because on June 11, 2007, Appellants filed an Information Disclosure Statement (IDS). The Examiner has not yet had the opportunity to review this IDS and the references cited therein. We, therefore, remand the application to the Examiner for the

required review of the documents for compliance with the applicable rules and, if compliant, for consideration of the references.

We also point out that Appellants' Brief of August 31, 2006 does not comply with 37 C.F.R. § 41.37(c)(1)(ix). 37 C.F.R. § 41.37(c)(1)(ix) requires that an appellant's brief include an evidence appendix "containing any copies of any evidence submitted pursuant to §§1.30, 1.131, or 1.132 of this title or any other evidence entered by the examiner and relied upon by appellant in the appeal along with a statement setting forth where in the record that evidence was entered in the record by the examiner." Appellants rely upon a § 1.131 Declaration in their attempt to overcome the rejection of claims 1-4, 6, 7, 9-15, and 21-27 under 35 U.S.C. § 102(b) as anticipated by Kendrick et al. (US 6,833,415) (Br. 21-22). But Appellants neither include a copy of the Declaration in the Evidence Appendix, nor state in the Appendix where in the record this Declaration was entered.

So that the Examiner may resolve the above issues, we order this Application remanded to the jurisdiction of the Examiner.

REMANDED

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